

**PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PAAB Docket No. 2015-030-00475R

Parcel No. 0613352027

Eldon & Regina Roth,

Appellants,

v.

Dickinson County Board of Review,

Appellee.

Introduction

The appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on October 4, 2016. Attorney Angie Schneiderman of Sioux City represented Eldon and Regina Roth. Assistant Dickinson County Attorney Lonnie Saunders represented the Board of Review.

The Roths are the owners of a residential two-story property located at 2112 Manhattan Boulevard, Wahpeton. Built in 2000, it has 5628 square feet of gross living area (GLA) and a full walkout basement with 2814 square feet of living-quarter quality finish. It also has 1596 square feet of attached garage space, with a 1248 square-foot basketball court/gymnasium above; and several decks, porches, and patios. The site is 0.949 acres. (Ex. A).

The subject property was assessed as of January 1, 2015, for \$3,521,800. The Roths protested to the Board of Review, claiming the property was assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b). The Board of Review denied the petition. The Roths then appealed to PAAB; at hearing, they asserted the correct fair market value is \$3,000,000.

Applicable Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case.

§ 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount.

§§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it.

§ 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct.

§ 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* Conversely, sale prices of abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the factors that distort market value, including but not limited to foreclosure or other forced sales. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2).

The Roths assert their property is assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(1)(b). In an appeal alleging the property is assessed for more than the value authorized by law, the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). If PAAB determines

the Roths have established the grounds for their protest, then PAAB must make an independent determination of the property's correct value based on all of the evidence. *Compiano*, 771 N.W.2d at 397 (citations omitted).

Findings of Fact

The Roths purchased the subject property in May 2007 for \$5,550,000. (Ex. A).

Kirk Stauss, Broker, and owner of Stauss Realty, testified for the Roths. Stauss testified he focuses his practice on lakeshore properties on West Lake Okoboji in Dickinson County. To his knowledge, there has not been a residential sale in excess of \$3 million in the lakes' area in the last five years. He indicated he participated in the sale of the subject to the Roths in 2007.

Stauss testified regarding a September 2015 comparable market analysis (CMA) he prepared for the subject property. He considered three comparable property sales in his analysis, acknowledging all had sold after the January 1, 2015, assessment date in question. Despite this, we find other value conclusions in the record that support his opinion.

Stauss' comparables had sales prices from \$1,600,000 to \$2,300,000 and occurred between May and June 2015. He adjusted the properties for differences compared to the subject and arrived at an opinion of value of roughly \$3,132,000.

The Board of Review submitted a summary of its position. (Ex. I). It asserts two of Stauss' comparable sales, 3401 Fairfield Street and 1914 Funnel Street, were not normal sales. However, it provided no explanation or evidence about the circumstances surrounding these sales to allow us to conclude they are, in fact, unreliable, abnormal sales. Although Stauss testified to his understanding that two of the sales were involved in a trade, he still felt those sale prices were fair.

Its summary further notes that Stauss' third comparable property, 2609 Lakeshore Drive, had the improvements razed shortly after it sold and asserts the sale represents a land sale not an improved sale. (Ex I. p. 2) We agree. Moreover, the Board contends this land sale indicates a sale price of \$16,000 per-front-foot. (Ex I. p.

2). Because of this, it believes Stauss' site adjustments of \$10,000 per-front-foot results in an artificially low conclusion of value.

The Roths also submitted an appraisal completed by Todd Kramer of Kramer Appraisal Services. Kramer testified at the hearing for the Roths. He indicated he completes 50 to 60 appraisals of lakefront residential property in Dickinson County annually and is familiar with sales affecting those properties.

Kramer developed the sales comparison and cost approaches to value. He concluded an opinion of market value for the subject property of \$3,000,000 as of July 2015. We find that although the effective date of his appraisal is after the January 1, 2015 assessment, all of his sales occurred between May 2012 and August 2014. Kramer indicated his belief that the market for properties like the subject has not appreciated since 2012.

Kramer submitted three sales, all located within two miles of the subject property, and adjusted them for differences. The properties sold between \$2,000,000 and \$2,750,000; after adjustments they ranged from roughly \$2,910,000 to \$3,033,000. Similar to the criticism it lodged against Stauss, the Board of Review asserts one of Kramer's sales (16720 N Inner Lane) was not normal and may not represent "the true market price." Again, the Board of Review failed to explain why this sale was not normal. Therefore, we are unable to determine if it is, in fact, an unreliable sale.

The Board of Review further contends Kramer is undervaluing the property because he did not properly adjust the sales for age and quality; and he included the gymnasium space in the garage adjustment. (Ex. I, p. 2). The assessment appears to value that space at \$24.80 per square foot, while Kramer's adjustment is \$16.00 per square foot. The Board of Review asserts Kramer's adjustment for the gymnasium "seems inadequate" because the space is finished and useable year round. We note Stauss testified that, in his experience selling the property, the gymnasium was a liability and not an asset.

Lastly the Board of Review asserts, like Stauss, Kramer's site adjustment of \$10,000 per-front-foot is too low and further results in an undervaluation of the subject

property. According to the appraisal, his \$10,000 per-front-foot adjustment was based on a 2013 sale of a bare lot on the east shore of West Okoboji.

The Board of Review asserts the correct adjustment for the site should be \$12,000 per front foot. It submitted a list of sales (Ex. E) and applied the extraction method to reconcile a price per front foot. In the absence of sufficient vacant land sales, the extraction method is a recognized method that may be used to estimate land values. APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 368 (14th ed. 2013). This analysis indicates a front foot price ranging from \$11,000 to \$14,000, with the predominant price per front foot being \$12,000.

The certified record contains another appraisal completed by Kramer with an effective date of February 28, 2014. In that appraisal, Kramer arrived at a value conclusion of \$3,000,000 using two of the same sales from his July 2015 appraisal.

The certified record also includes an appraisal completed by Steve Lindeberg of Lindeberg Appraisal. This appraisal had an effective date of April 2013 and relied on sales that occurred between May 2012 and August 2012. Lindeberg arrived at a \$3,200,000 opinion of value. It is unclear which party submitted the Lindeberg appraisal to the Board of Review and no testimony was given or evidence entered into the record in support of this valuation.

The Board of Review acknowledges the subject's original 2015 assessment was based on the incorrect square footage. (Ex. I). Correcting for this error, the Board of Review contends the correct total assessment should be \$3,431,200. (Ex. I).

Analysis & Conclusions of Law

There are three appraisals and a CMA in the record, which indicate market values for the subject property between \$3,000,000 and \$3,200,000. In addition, the Board of Review admits the subject's current assessment is excessive because it was based on the incorrect square footage. Thus, we find the subject property's assessment is excessive. Our remaining task is to determine the subject's correct value under Iowa Code section 441.21.

The respective value opinions in this case are as follows:

Modified Assessed Value	\$3,431,200
Stauss CMA	\$3,132,033
Kramer 2015 Appraisal	\$3,000,000
Kramer 2014 Appraisal	\$3,000,000
Lindeberg Appraisal	\$3,200,000

The Board of Review asserts two of the comparable sales in the CMA were not “normal” transactions. Stauss testified two sales were essentially a trade, but he felt the sales prices were fair. The Board of Review further asserts that Sale 1 in Kramer’s appraisal is also abnormal. Because there is no other information regarding these sales to indicate their sale prices were distorted, we decline to omit these comparables from consideration.

The Board of Review also takes issue with several adjustments in Kramer’s 2015 appraisal. First, the Board of Review asserts Kramer’s \$10,000 per-front-foot adjustment is too low. We agree. By use of the extraction method to land valuation, the Board of Review’s evidence shows prevailing land values on a per-front-foot basis are approximately \$12,000. Kramer’s \$10,000 per-front-foot adjustment is based solely on a 2013 sale about which no additional information was provided. In addition, Kramer’s adjustment looks low when compared to a more recent land sale showing front foot values closer to \$16,000. Correcting the site value to reflect a \$12,000 per-front-foot adjustment, the adjusted values range from roughly \$3,007,500 to \$3,120,000.

The Board of Review also contends Kramer’s appraisal has not appropriately accounted for the subject property’s superior quality. While the properties vary in age, we have not traditionally equated differences in age with differences in construction quality. We note that the property record cards for the subject and these comparables show they have all been given an Executive grade. Admittedly, the subject’s grade (E+40) is slightly higher than these two comparables. As Kramer’s report and testimony indicated he has recently inspected the subject and all of his comparables, we give some deference to his judgment in the absence of any contradictory evidence.

In addition, the Board of Review asserts Kramer's treatment of the indoor gymnasium undervalues the improvements. Kramer included the gymnasium space in his garage adjustment whereas the Board of Review asserts the gymnasium is climate-controlled space that is usable year-round and is more akin to living area. At the same time, Stauss testified the gymnasium was seen as a liability to prospective purchasers when the property was offered for sale and eventually bought by the Roths in 2007.

We agree the gymnasium offers value to the subject that is greater than the value attributable to a garage. At the same time, we do not believe that value is equivalent to finished living area. Accordingly, we weigh those factors in our final determination of value.

Kramer's 2014 appraisal is substantially similar to his 2015 appraisal and comes to the same conclusion of value. Lindeberg's appraisal has an effective date of April 30, 2013, and comes to a conclusion of value of \$3,200,000 based on 2012 sales.


Giving most consideration to Kramer's appraisal, which relies on sales that occurred prior to the January 1, 2015, assessment date; but correcting the site value to reflect a \$12,000 per-front-foot adjustment, the adjusted values range from roughly \$3,007,500 to \$3,120,000. Weighing the aforementioned evidence and testimony, we find the record indicates the subject property's fair market value, as of January 1, 2015, is \$3,100,000.

Order

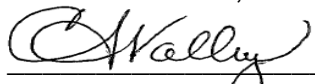
PAAB ORDERS that the Dickinson County Board of Review's action is modified and concludes the subject's fair and equitable assessment as of January 1, 2015, is \$3,100,000.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

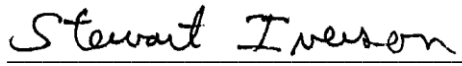
Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.



Karen Oberman, Board Member



Camille Valley, Board Member



Stewart Iverson, Board Chair

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